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**UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTINE UPORSKY,	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No.:
	)	
CARDWORKS SERVICING, LLC,	)	<b>COMPLAINT AND DEMAND FOR</b>
	)	<b>JURY TRIAL</b>
Defendant	)	
	)	<b>(Unlawful Debt Collection Practices)</b>

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**COMPLAINT**

CHRISTINE UPORSKY ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against CARDWORKS SERVICING, LLC ("Defendant"):

**INTRODUCTION**

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

**JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

### PARTIES

6. Plaintiff is a natural person residing in East Stroudsburg, Pennsylvania, 18301.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with its corporate headquarters located at 101 Crossways Park West, Woodbury, New York, 11797.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3       12. In particular, the FDCPA broadly enumerates several practices considered  
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
7 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
8 collector may not use any false, deceptive, or misleading representation or means in connection  
9 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
10 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
14 connection with the collection of a debt.  
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16       13. In enacting the FDCPA, the United States Congress found that “[t]here is  
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
18 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
19 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
20 additionally found existing laws and procedures for redressing debt collection injuries to be  
21 inadequate to protect consumers. 15 U.S.C. § 1692b.  
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23       14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
24 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action  
2 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

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4 **FACTUAL ALLEGATIONS**

5 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
6 debt from Plaintiff.

7 16. The alleged debt at issue arose out of transactions, which were primarily for  
8 personal, family, or household purposes.

9 17. Upon information and belief, the debt Defendant was attempting to collect was  
10 assigned, placed, sold or otherwise transferred to Defendant for collection.

11 18. Beginning in or around August 2010 and continuing until September 2010,  
12 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking  
13 payment from Plaintiff.

14 19. Defendant harassed Plaintiff by making repeated and continuous calls to her  
15 cellular telephone.

16 20. Most recently, on or about September 8, 2010, Defendant called Plaintiff from the  
17 following telephone number: (877) 487-5583, which the undersigned confirmed is a phone  
18 number that belongs to Defendant.

19 21. In its September 8, 2010, phone call to Plaintiff, Defendant demanded that  
20 Plaintiff pay an alleged debt owed to Merrick Bank.

21 22. Plaintiff informed Defendant that if the calls continued that she would file a  
22 harassment lawsuit against them.

23 23. Defendant threatened Plaintiff that “they did not care they would call her ten (10)  
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1 times a day until we get paid.”

2 24. The telephone call was terminated, and thereafter, Plaintiff began receiving  
3 repeated telephone calls from Defendant throughout the remainder of the day on September 8,  
4 2010.

5 25. During one of Defendant’s repeat telephone calls, Plaintiff tried to give  
6 Defendant’s representative her attorney’s information, at which point Defendant’s representative  
7 hung up on her.

8 26. Plaintiff called back to Defendant to provide her attorney’s information and spoke  
9 with a Supervisor.  
10

11 27. The Supervisor informed Plaintiff that the telephone call would be recorded.  
12 Plaintiff informed supervisor that she too was recording the phone conversation. At which point  
13 the supervisor told Plaintiff that the call was terminated and hung up on her.

14 28. Plaintiff received two (2) more telephone calls from Defendant.

15 29. Within five (5) days after its initial communication with Plaintiff, Defendant  
16 failed to send written correspondence to Plaintiff notifying her of her rights to dispute the debt  
17 and/or request verification of the alleged debt.

18 30. Defendant’s actions in attempting to collect the alleged debt were harassing,  
19 abusive and highly deceptive.  
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#### 21 CONSTRUCTION OF APPLICABLE LAW

22 31. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
23 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer  
24 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.  
25 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233

1 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
2 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

3 32. The FDCPA is a remedial statute, and therefore must be construed liberally in  
4 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
5 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
6 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the  
7 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
8 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
9 2002).

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11 33. The FDCPA is to be interpreted in accordance with the "least sophisticated"  
12 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
13 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
14 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for  
15 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
16 and the fact that a false statement may be obviously false to those who are trained and  
17 experienced does not change its character, nor take away its power to deceive others less  
18 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it  
19 ensures protection of all consumers, even naive and trusting, against deceptive collection  
20 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
21 collection notices. Clomon, 988 F. 2d at 1318.  
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**COUNT I**  
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

34. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff, after Defendant knew Plaintiff was represented by an attorney with respect to such debt;
- c. Defendant violated §1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- d. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- e. Defendant violated §1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of a debt;
- f. Defendant violated §1692e(10) of the FDCPA by using false representations or deceptive means to collect or attempt to collect a debt;
- g. Defendant violated §1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- h. Defendant violated §1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt; and

- 1 i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner  
2 and failed to comply with the FDCPA.  
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4 WHEREFORE, Plaintiff, CHRISTINE UPORSKY, respectfully prays for a judgment as  
5 follows:

- 6 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §  
7 1692k(a)(1);  
8 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant  
9 to 15 U.S.C. § 1692k(a)(2)(A);  
10 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
11 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
12 e. Any other relief deemed appropriate by this Honorable Court.  
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15 **DEMAND FOR JURY TRIAL**

16 PLEASE TAKE NOTICE that Plaintiff, CHRISTINE UPORSKY, demands a jury trial  
17 in this case.  
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1  
2 DATED: 6/17/11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

3  
4 By: 

Craig Thor Kimmel

Attorney ID # 57100

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

Fax: (877) 788-2864

Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)